IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 767 OF 2006

IN

CIVIL APPEAL NO. 796 OF 2000

IN

SPECIAL CIVIL SUIT NO. 619 OF 1993

Dhanraj Sobhachand Sakharia .... Appellant

Versus

Sau. Mina Dilip Paygude & Ors. .... Respondents

Ms. Manjiri Parasnis i/by Mr. G.S. Godbole, Advocate for the Appellant

CORAM : ABHAY S. OKA, J.

DATE : 8TH AUGUST 2006

P.C.

1) The second appeal is filed by the original plaintiff in a suit for specific performance. The trial Court declined to grant specific performance. However, the trial Court passed a decree for refund of the consideration with interest thereon at the rate of 18/- percent per annum. Appeals were preferred against

the decree by both the Appellant and the first Respondent (original defendant no. 1). The Appellate Court has modified the decree by reducing the rate of interest on refund of consideration from 18 percent to 9 per cent.

2) The learned Advocate appearing for the Appellant submitted that execution of the Agreement for Sale was clearly established and only defence of the first Respondent was that the agreement was executed as a collateral security for loan transaction between the parties. She submitted that the burden to prove the fact that the agreement was by way of collateral security was on the first Respondent who did not enter the witness box. It is submitted that the decree for specific performance should have followed since the execution of the suit agreement is established. Without prejudice to the aforesaid contentions, the learned Advocate further submitted that in any case there was no warrant for reducing the rate of interest to 9 per cent per annum and the ground given for reducing the interest was irrelevant.

3) I have considered the submissions. The Appellate Court has recorded a finding that though the suit agreement was typed on 1st February 1980, the same was executed by the first Respondent on 14th October 1980. The Appellate Court found that the first Respondent sold the suit flat to the second Respondent

under the Agreement dated 7th February, 1980 and on the basis of the Agreement dated 7th February 1980, a Deed of apartment has been executed in favour of second Respondent in respect of the suit flat on 10th June, 1983.

4) Considering the nature of the transaction between the Appellant and the first Respondent, the Courts below have declined exercise discretion under Section 20 of The Specific Relief Act, 1963 by refusing a decree for specific performance. The Appellate Court has also noted that admittedly the Appellant has invested the amount which is unaccounted. Therefore no fault can be found with the discretion exercised by the courts below against the Appellant.

5) So far as interest is concerned, in the absence of stipulation in the agreement regarding interest, the Appellate Court has held that the Appellant is entitled to interest at the rate of 9% per annum. The Appellate Court found that the rate of interest at 18% per annum awarded in the year 1997 was unreasonable and was on the higher side. No fault can be found with the approach of the Appellate Court. Hence, there is no merit in the appeal and the same is therefore dismissed.

(ABHAY S. OKA, J.)